

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KYUNG LEEM, *et al.*,

Plaintiffs,

v.

BANK OF AMERICA HOME LOANS,
et al.,

Defendants.

Case No. C13-1517RSL

ORDER OF DISMISSAL FOR
LACK OF JURISDICTION

I. INTRODUCTION

This matter comes before the Court on Defendant Bank of America, N.A.’s (“BANA”) “Motion to Dismiss Plaintiffs’ Complaint” (Dkt. # 16), and Defendant Bishop, White, Marshall & Weibel, P.S.’s (“BWMW”) “Motion for Summary Judgment” (Dkt. # 21). Defendant IH2 Property Washington LP (“IH2”) joins BANA’s motion to dismiss (Dkt. # 24). Plaintiffs filed this action against BANA, BWMW, IH2, Invitation Homes, and unknown “Doe Defendants,” identified as “Black Corporations,” (collectively “Defendants”) in August 2013. Dkt. # 1. Plaintiffs assert several state law causes of action against Defendants related to the nonjudicial foreclosure of their home. Dkt. # 1.

On August 29, 2013, the Court issued an Order to Show Cause why the case should not be dismissed for lack of subject matter jurisdiction. Dkt. # 7. Although

1 Plaintiffs asserted jurisdiction based on diversity, they failed to allege the citizenship of
2 BMW or Invitation Homes. In their response to the Court's Order, Plaintiffs allege that
3 Invitation Homes is a citizen of Delaware. Dkt. # 13 at 2. With respect to BMW,
4 Plaintiffs acknowledge that BMW is a Washington corporation, but argue nonetheless
5 that there is complete diversity in this case because BMW is a "nominal defendant."
6 Id. at 13. After the Court vacated the Order to Show Cause, BANA moved to dismiss
7 Plaintiffs' complaint pursuant to Fed. R. Civ. P. 12(b)(6) and BMW filed a motion for
8 summary judgment. Upon further review, the Court finds that it lacks subject matter
9 jurisdiction and therefore, DISMISSES Plaintiffs' complaint and DENIES as moot
10 BANA's motion to dismiss (Dkt. # 16) and BMW's motion for summary judgment
11 (Dkt. # 21).

12 II. DISCUSSION

13 "Federal courts are courts of limited jurisdiction [that] possess only that power
14 authorized by Constitution and statute." Kokkonen v. Guardian Life Ins. Co. of Am., 511
15 U.S. 375, 377 (1994). Jurisdiction is a threshold matter that must be determined before a
16 district court may consider the merits of case, or any motion raised by the parties. Steel
17 Co. v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998). Thus, this Court has an
18 ongoing obligation to ensure that it has jurisdiction over Plaintiffs' claims and may raise
19 the issue *sua sponte*. Watkins v. Vital Pharm., Inc., 720 F.3d 1179, 1181 (9th Cir. 2013);
20 see also Fed. R. Civ. P. 12(h)(3). If, at any time the Court determines that it lacks subject
21 matter jurisdiction, the Court must dismiss the action. Fed. R. Civ. P. 12(h)(3).

22 A federal district court has subject matter jurisdiction over a case only if the
23 complaint asserts a federal cause of action, or if the parties are citizens of different states
24 and the amount in controversy exceeds \$75,000. 28 U.S. C. §§ 1331, 1332(a). For
25 diversity jurisdiction to exist under 28 U.S.C. § 1332, there must be complete diversity of

1 citizenship. In a case involving multiple plaintiffs and defendants, each plaintiff must be
2 a citizen of a different state than each defendant. Morris v. Princess Cruises, Inc., 236
3 F.3d 1061, 1067 (9th Cir. 2001).

4 In their complaint, Plaintiffs do not allege any federal causes of action. Instead,
5 they contend that diversity jurisdiction exists because they are Washington residents and
6 “Defendants are a national corporation engaged in interstate commerce through multiple
7 states.” Dkt. # 1 ¶ 2. In response to the Court’s Order to Show Cause, Plaintiffs
8 acknowledge that BMW is a Washington corporation whose principle place of business
9 is in Washington, but they contend, nonetheless, that there is complete diversity because
10 BMW is a “nominal defendant” whose citizenship is ignored for purposes of
11 determining whether there is diversity jurisdiction. Id. ¶¶ 14-15.

12 The Ninth Circuit has held that “[a] nominal defendant is a person who holds the
13 subject matter of the litigation in a subordinate or possessory capacity as to which there is
14 no dispute.” S.E.C. v. Colello, 139 F.3d 674, 676 (9th Cir. 1998) (quoting S.E.C. v.
15 Cherif, 933 F.2d 403, 414 (7th Cir. 1991)). “The paradigmatic nominal defendant is a
16 trustee, agent, or depositary . . . [who is] joined purely as a means of facilitating
17 collection.” Id. (internal quotation marks and citation omitted). Because there are no
18 claims against a nominal defendant and he has no real interest in the outcome of the
19 litigation, “it is unnecessary [for a court] to obtain subject matter jurisdiction over him
20 once jurisdiction of the defendant is established.” Id.

21 Contrary to Plaintiffs’ contention, BMW is not a nominal defendant. Plaintiffs
22 are correct that a trustee under a deed of trust may be a nominal party in certain
23 circumstances. E.g., Prasad v. Wells Fargo Bank, N.A., No. C11-894-RSM, 2011 WL
24 4074300, at *3 (W.D. Wash. Sept. 13, 2011). However, the cases cited by Plaintiffs in
25 support of their argument that BMW is a nominal defendant are distinguishable on their

1 facts. In each district court case on which Plaintiffs rely, there were no substantive
2 factual allegations or causes of action asserted against the trustee. Gogert v. Reg'l Tr.
3 Servs., Inc., No. C11-1578JLR, 2012 WL 289205, at * 4 (W.D. Wash. Jan. 31, 2012);
4 Prasad, 2011 WL 4074300, at *3; Sherman v. Wells Fargo Bank, N.A., No. CIV S-11-
5 0054 KJM EFB, 2011 WL 1833090, at *2-3 (E.D. Cal. May 12, 2011); Dempsey v.
6 Transouth Mort. Corp., 88 F.Supp.2d 482, 484 (W.D.N.C. 1999); see also Andersen v.
7 Homecomings Fin., LLC, No. 2:11-CV-332-TS, 2011 WL 2470509, at * 5 (D. Utah June
8 20, 2011) (finding trustee was nominal party fraudulently joined to defeat diversity
9 jurisdiction because plaintiffs' only claim against the trustee failed as a matter of law).
10 Notably, in Prasad, the court explained that "in Washington, as in other states, unless a
11 plaintiff has made substantive allegations against the trustee, the trustee under a deed of
12 trust is neutral with respect to the plaintiff and defendant and has no interest in the
13 outcome of a lawsuit such as the one at bar." 2011 WL 4074300, at *3.

14 Here, Plaintiffs have made substantive allegations that BMWW failed to follow the
15 statutory requirements of a nonjudicial foreclosure. Dkt. # 1 ¶¶ 16-18, 36. Under the
16 Washington Deed of Trust Act ("DTA") a trustee has specific obligations and duties, the
17 violation of which may give rise to a claim under the DTA. RCW 61.24.030. In addition
18 to their DTA claim, Plaintiffs assert claims of negligent and intentional infliction of
19 emotional distress against BMWW. Id. ¶¶ 48-57. Because Plaintiffs have asserted
20 specific causes of action against BMWW and they seek to recover damages for the harm
21 they allegedly suffered as a result of BMWW's wrongful conduct, BMWW is not a
22 nominal defendant. Couture v. Wells Fargo Bank, NA, No. 11-CV-1096-IEG (CAB),
23 2011 WL 3489955, at *3 (S.D. Cal. Aug. 9, 2011) (finding trustee was not a nominal
24 defendant where plaintiff made substantive allegations and asserted claims for money
25 damages against defendant); Silva v. Wells Fargo Bank NA, No. CV 11-3200-GAF

(JCGx), 2011 WL 2437514, at *5-6 (C.D. Cal. June 16, 2011) (same). Because BMW is not a nominal defendant, the Court must consider its citizenship for purposes of determining diversity jurisdiction. As Plaintiffs acknowledge, BMW and Plaintiffs are both citizens of Washington. Thus, complete diversity is lacking and this Court lacks subject matter jurisdiction. The Court, therefore, must dismiss Plaintiffs' complaint. Fed. R. Civ. P. 12(h)(3).

III. CONCLUSION

For all of the foregoing reasons, Plaintiffs' complaint is DISMISSED for lack of subject matter jurisdiction. The Court DENIES as moot BANA's motion to dismiss (Dkt. # 16) and BMW's motion for summary judgment (Dkt. # 21). The Clerk of Court is directed to close this case.

DATED this 6th day of March, 2014.



Robert S. Lasnik
United States District Judge